

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

U.S. DISTRICT COURT
FILED AT WHEELING, WV
JUL 27 2007
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

JAMES M. WENSELL,

Petitioner,

v.

CIVIL ACTION NO. 3:06-CV-4
(BAILEY)

THOMAS MCBRIDE,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ["R & R"]. Magistrate Judge Kaull filed his R & R on February 15, 2007 [Doc. 26]. In that filing, the magistrate judge recommended that this Court grant the Motion to dismiss [Doc. 14], grant the motion for summary judgment [Doc. 13], and to deny and dismiss with prejudice the petitioner's application under 28 U.S.C. § 2254 [Doc. 1].

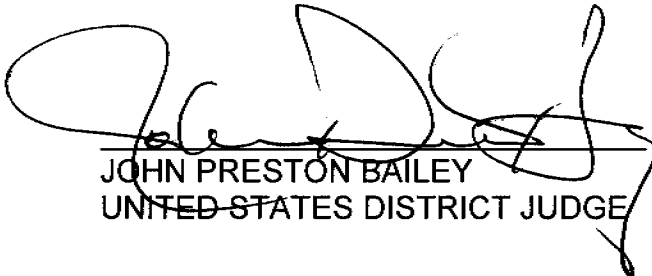
Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due April 27, 2007 [Doc. 28], pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The petitioner timely filed his Objections [Doc. 29] on April 3, 2007. Accordingly, this Court will conduct a *de novo* review only as to the portions of the report and recommendation to which the petitioner objected. The remaining portions of the report and recommendation to which the petitioner did not object will be reviewed for clear error.

Upon careful review of the report and recommendation [Doc. 26] and the petitioner's objections thereto [Doc. 29], it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 26] should be, and is, hereby **ORDERED ADOPTED** for the reasons stated therein. Accordingly, the Court hereby **DENIES** the petitioner's application under 28 U.S.C. § 2254 [Doc. 1], and **DISMISSES it with prejudice**. Additionally, the Court **GRANTS** the respondent's motion to dismiss [Doc. 14], and **GRANTS** the respondent's motion for summary judgment [Doc. 13].

The Clerk is directed to mail true copies of this Order to all counsel of record and the *pro se* petitioner.

DATED: July 27, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE